IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 196 OF 2007

Ramzan Ashrafali Khan
Age 37 years, Occu. Mechanic
r/o. Room 18, Gani Compound Chawl,
Quarry Road, Malad (E),
Mumbai - 400 097. ... Petitioner

V/s.

1. The State of Maharashtra

2. The Superintendent,
Paithan Open Prison,
Paithan, Dist. Aurangabad.

3. The Inspector General of
Prisons, State of Maharashtra,
Central Building,
Pune - 411 001. ...Respondents.

Mr. N. N. Gawankar i/by Arfan Sait for the petitioner.

Mr. D. S. Mhaispurkar, APP for the State.

CORAM : SMT. RANJANA DESAI &
ANOOP V. MOHTA,JJ.

JUDGMENT RESERVED ON : 09/03/2007

JUDGMENT PRONOUNCED ON: 23/03/2007.

JUDGMENT (Per: Anoop V. Mohta, J.)

The petitioner/accused was convicted by Greater Bombay Sessions Court on 03/03/1993 under Section 302 of the Indian Penal Code and has been sentenced to suffer imprisonment for life. The appeal preferred by the petitioner was also dismissed on

30/11/1994.

2. The relevant prosecution case as observed in Criminal Appeal No. 245 of 1993 is as under:-

. "Accused and the co-accused were regular customers at country liquor shop run by one Sharma at Narsobawadi. Sunder (P.W.1) had been employed by Sharma to help him in running the shop after 10.00 p.m. every day. sharma used to take away cash collected till that time with him, leaving the responsibility of collecting the sale proceeds of the sale of liquor after 10.00 p.m. to Sunder who used to hand over the same to him the following morning. On March 6, 1990, original accused No. 4 had a drink at the shop and when Sunder demanded the payment of Rs.2.50 towards the price of the liquor, he picked up a quarrel with him and threatened him and went away. After about half an hour original accused No.4 came back to the shop with original accused Nos. 1 to 3 and started beating Sunder. One Balkrishna Shetty who had developed close friendship with Sunder and considered him to be like his brother was sitting at the shop since before the original four accused came to the shop and started assaulting Sunder. Balkrishna

intervened and asked the accused to cool down. Accused asked him as to how he was concerned with the dispute. They thereafter dragged him out from the room of the shop and original accused Nos. 2 to 4 started beating him. The accused who was standing near them, suddenly whipped out a knife from his hip pocket and gave a blow on the front side of Balkrishna. Balkrishna swerved on being inflicted with the bleeding injury. The accused gave another blow with the knife on the back side whereafter due to two bleeding stab wounds Balkrishna collapsed. All the four accused ran away towards Dhanjiwadi across the Highway. Sunder with the help of the neighbouring shopkeeper Kotian, took the injured to Dindoshi Police Station in an autorickshaw and on being told to rush the injured to the hospital, drove in the same rickshaw to Bhagwati Hospital. The doctor at the Bhagwati hospital declared the injured dead.

. "He found two deep stab injuries, one from the front side and other from the back side on the dead body. he also found some abrasion on it. He deposed that all these three injuries were ante-mortem. He further deposed that the incised wounds found on the body could have been inflicted with a weapon (Article

7) like the knife."

3. The Sessions Court after considering the material available on record has convicted the petitioner/accused. The appeal preferred by the accused was also dismissed by an order dated 30/11/1994. The order of conviction against the appellant, original accused No.1 therefore, has been confirmed.

4. The petitioner based on the guidelines of premature release, dated 11th May, 1992 has filed an application with prayer to release him in view of Clause 3(a). The relevant clauses 3(a)(b)(c) and (d) are reproduced as under:-

3.	MURDERS FOR OTHER REASONS:-	
a)	Where a murder is committed in the course of quarrel without premediation in an individual capacity and where the person has no previous criminal history.	22 years
b)	As at (a) above but with	24 years

premeditation or by a gang.

c)	Murders resulting from trade union activities and business rivalry.	26 years
d)	Murder committed with premeditation and with exceptional violence or perversity.	26 years

5. Pending the petition, the respondent by an order dated 27th February, 2007 rejected his application in exercise of the powers conferred by Sub-Section (1) of Section 432 of the Code of Criminal Procedure ("The Code") and concluded that the case of prisoner Ramzan Ashraf Ali Khan falls under category 3(d) of the guidelines dated 11th May, 1992, hence decided to remit that portion of the sentence of imprisonment of life which is in excess of 26 (Twenty Six) years of total imprisonment including all remissions, subject to the completion of actual imprisonment of 14 years and subject to the condition of the said prisoner’s good behaviour and conduct in prison till the time of

his release.

6. After hearing both the parties, in the facts and circumstances of the case, we are also of the view that the petitioner/accused is not entitled to claim, as prayed, the benefit of category 3(a) of the guidelines. He falls under category 3(d) of the guidelines as rightly observed in order dated 27th February, 2007. The affidavit of respondents dated 08/03/2007 has further endorsed the prosecution case that all the four accused including the petitioner dragged the deceased Balkrishna, who had friendship with Sunder and who intervened and asked the four accused to cool down. All four accused thereafter dragged him out from the room of the shop and started beating him. The petitioner/accused who was standing near, whipped out knife from his pocket and gave a blow on the front side and another blow on the back side of the deceased. It is clear as recorded that all the accused including petitioner, therefore, had definite intention to drag him up and to kill the deceased. The petitioner after re-preminding the Balkrishna dragged the deceased out of the room and all co-accused started beating him. The action to drag him out of the room and giving two blows one

after another, in the facts and circumstances of the case, cannot be said to be a quarrel with no pre-meditation in an individual capacity.

7. In this background, therefore, even though there was no criminal history of the petitioner/accused still, it cannot be said that the murder committed by them was not with pre-determination. We are of the view that the murder was committed by the pre-determination and therefore, the petitioner is rightly categorized under Clause 3(d) and therefore, he is required to undergo including remissions, 26 years imprisonment and not 22 years, as claimed. Once satisfied on facts, we are not impressed by other submissions based on the judgements raised by the petitioner, as those cases are distinct and distinguishable on facts itself. We see no illegality in rejecting the claim of the petitioner.

8. The petition is, therefore, dismissed.

[SMT. RANJANA DESAI, J.]

[ANOOP V. MOHTA, J.]